

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARTIN J. WALSH,
SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR,

Plaintiff,

v.

PACKERS SANITATION SERVICES,
INC., LTD.

Defendant.

CIVIL ACTION FILE NO.
4:22-cv-3246

DECLARATION OF THOMAS FRANCIS PHELAN

I, Thomas Francis Phelan, declare under penalty of perjury, as prescribed in 28 U.S.C. § 1746, that the following is true and correct:

1. I am an investigator for the United States Department of Labor, Wage and Hour Division's Des Moines, IA District Office. I am the lead investigator assigned to investigate the Defendant's compliance with the child labor provisions of the Fair Labor Standards Act ("FLSA").

2. I began working as an investigator with the Wage and Hour Division on December 18, 1988. I am assigned to the Des Moines, IA District Office. I have worked out of the Omaha, NE office for over 33 years. I have conducted over 700 investigations as the lead investigator, including about 100 investigations addressing child labor.

3. The statements made herein are based on my training and experience, my personal knowledge, observations made during the execution of the warrant involving Defendant (as discussed below), as well as conversations with representatives and employees of the Defendant in this matter.

The Defendant

4. Packers Sanitation Services, Inc., Ltd., which may also operate as or do business as Packers Sanitation Services, LLC, (“PSSI”) is a cleaning and sanitation company that provides contract work at meat processing facilities. The PSSI location at 515 W. 3rd Street, Grand Island, Nebraska 68801, is a workplace where PSSI currently recruits and signs up employees to work for PSSI at a meat processing facility located at 555 S. Stuhr Road in Grand Island. The meat processing facility is owned and/or operated by JBS USA or one of its affiliates (“JBS”).

The Investigative Findings

5. On August 24, 2022, the Wage and Hour Division initiated an investigation of PSSI to determine whether its practices complied with the FLSA, including its child labor provisions.

6. Prior to opening its investigation, Wage and Hour received a referral about possible child labor violations at PSSI in Grand Island from another law enforcement agency.

7. On September 2, 2022, I delivered a subpoena to Grand Island Northwest Public High School requesting certain documentation on minors attending the Grand Island Northwest Public School District, with excessive absenteeism who stopped attending school, had injuries observed by school employees, or were falling asleep during class due to outside employment.

8. On October 12, 2022, from 10:00 p.m. to midnight, I conducted surveillance at the JBS plant located at 555 S. Stuhr Road. I observed 183 workers entering the JBS plant. I did not keep track of workers exiting the plant. I observed that

almost all the workers entering the plant stopped at a counter, located to the left, immediately upon entering the outside door. They stopped to sign something, then proceeded into the plant. However, seven employees did not go to the left and instead walked through the turn-style on the right side without stopping at the desk to the left. I observed six to ten individuals who were very small in height, thin, and who on appearance might be children, walking into the JBS plant.

Execution of the Warrant(s)

9. On October 13, 2022, Wage and Hour executed the warrants on the PSSI storefront (515 W. 3rd Street) and at the JBS facility (555 S. Stuhr Road) during the workers' shift. I entered the JBS plant at 2:00 a.m. Nancy Alcantara, Acting Director of Enforcement for the Midwest Region, accompanied me at entry, and we were subsequently joined by Regional Enforcement Coordinator Shannon Rebolledo and Wage and Hour Investigators Fatmir Kote, Edith Cardenas, Cristina Lopez, and Xiomara Martinez. We were permitted to go upstairs to the second level where we were eventually met by Gregorio Acosta, the PSSI Area Manager, who then called the onsite Manager, Marina Ramirez, to join us. I served the warrant on both Gregorio Acosta and Marina Ramirez.

Observations at the JBS Plant

10. Robert (a.k.a. Bob) Meier, JBS Human Resources, gave Nancy Alcantara and me access to his JBS computer, which had a file of contractor badges issued to PSSI workers. This file had facial photos of the PSSI workers taken on the date of issuance of the badge. Bob Meier had conveyed to us that he did not know how to download this file, and since it was before 7:00 a.m., all he was getting was voicemail of the person who

knew how to do this. Hence, Nancy Alcantara and I began the process of reviewing each badge issued, looking at the face picture, and if the individual appeared to look young and might be a minor, taking a picture using our government iPhone.

11. I interviewed PSSI Area Manager Gregorio Acosta. Mr. Acosta conveyed that he did not hire, fire, or schedule the PSSI workers. These managerial duties were performed by Mariana Ramirez, the onsite Manager, and by Linda Rodriquez, the secretary at the PSSI office downtown.

Machines at the JBS Plant

12. As part of its investigation, Wage and Hour requested JBS provide information about the machines at its Grand Island plant. JBS provided the names of the machines in each area of the plant and information about the machine's function, along with photos of the machines.

13. I personally reviewed all the information and photos provided. In doing so, I was able to determine the specific type of machines PSSI employees would be cleaning based on the area of the plant in which they worked. Some of the machines in each department include:

On the Kill Floor

- a. Millard Heavy Duty Head Splitter – According to the manufacturer's website, this machine is “designed with a hydraulically powered cylinder to enable your operator to swiftly and cleanly drive the blade through the cradled head”.
- b. Jarvis Buster IV electrically powered bandsaw – This 190-pound saw is used to split cow carcasses in half length-wise.

- c. Jarvis Hydraulic Brisket Saw – This 5-horsepower, forty-pound saw “[c]uts fat cattle briskets in 3 seconds per carcass”, per the manufacturer’s website.
- d. IMS Side Puller and Down Puller – These machines rip the hides from the carcasses.
- e. Jarvis Hock Cutter/Dehorner – This machine is described on the manufacturer’s website as “[u]sed for front and hind beef hock cutting through the bone or joint. Also an effective beef dehorner.”

In the Cooler Department

- f. Jarvis Wellsaw – This electric reciprocating saw “for the toughest jobs cutting through meat and bone” can be used for “a variety of applications ranging from cutting forequarters, shank bones, primal cuts, aitch bones, brisket opening and splitting.”

In the “New Fab” Area

- g. Paddle bone puller – This machine removes the sternum from carcasses.
- h. Grasselli skimmers – This machine skins fat from the carcass.
- i. Various meat bandsaws manufactured by Butcher Boy, including several with 7.5 horsepower motors.

In the “Old Fab 1 & 2” Area

- j. Rose meat puller – This machine pulls meat cut from a muscle that spans from the chuck to the flank of the carcasses.
- k. Grasselli skimmers – This machine skins fat from the carcass.
- l. Various meat bandsaws manufactured by Butcher Boy, including several that cut “4000 FPM” (feet per minute).

In the Loin Room

- m. Kidney fat puller – This machine pulls fat away from the kidneys.
- n. Jarvis Buster V – This 196-pound saw is used for “splitting fat cattle, bulls, oxen, and horses” (per the manufacturer’s website).
- o. Various meat bandsaws manufactured by Butcher Boy, including several with 7.5 horsepower motors.

In the Meat Master Area

- p. Cozzini Prime Mix Mixer/Blender – This machine can grind up to 15,000 pounds of raw meat.

In the Ground Beef Area

- q. Weiler Dominator Mixer/Grinder – This machine has 125 horsepower grinder motor and has a grind rate of 36,000 pounds per hour.

Additional Information

14. In continuing my investigative work, I reviewed two documents (a 112 list and JBS badge) that list the start date of Minor Child A. Based on their date of birth, as verified by their birth certificate, student registration, and student profile, Wage and Hour determined Minor Child A was 13-years-old when hired and worked for PSSI for approximately four weeks before turning 14.

Executed on this 7th day of November, 2022.

Thomas F
Phelan

Digitally signed by Thomas F
Phelan
Date: 2022.11.07 13:36:17
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Thomas F. Phelan
Wage and Hour Investigator